

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

MELVIN TUCKER,	)	CASE NO. 4:10CV734
	)	
Plaintiff,	)	JUDGE JOHN R. ADAMS
	)	
vs.	)	
	)	
ERIC HOLDER, et al.,	)	<b><u>ORDER</u></b>
	)	[Resolving Doc. 26]
Defendants.	)	
	)	
	)	

This matter is before the Court on Defendants motion to dismiss this case. Doc. 26. For the reasons set forth below, Defendants' motion is GRANTED and the complaint is DISMISSED.

**I. Procedural Facts**

Plaintiff filed his complaint on April 8, 2010. In his complaint, he asserted that he was attacked by an inmate who suffered from a mental illness. On August 24, 2010, this Court dismissed without prejudice Plaintiff's claims against Attorney General Eric Holder, Assistant Warden Lorenzini, Assistant Warden Bill Story, Captain Fitzgerald, and Lieutenant Butts. Remaining were Plaintiffs claims as to Warden Shartle and Dr. Clifford. Plaintiff executed service upon Dr. Clifford and Warden Shartle.

On January 6, 2011, the Court held a telephonic case management conference, at which Plaintiff and an Assistant United States Attorney participated. At this conference, Plaintiff was informed that he had failed to properly serve the Government. Notably, he failed to provide the U.S. Attorney with notice of this case. Fed.R.Civ.P. 4(i)(1)(A)(i) and (ii). As a result, on January 7, 2011, the Court ordered Plaintiff, pursuant to Fed.R.Civ.P 4(i) to serve the United States no later than February 7, 2011. Doc. 19. On February 15, 2011, Plaintiff perfected service on the

U.S. Attorney General. On February 14, 2011, Defendants filed their Notice of Failure to Serve United States of America. Doc. 22. Plaintiff responded to this notice. On March 8, 2011, the Defendants filed a notice of Substitution of United States as a Party Defendant. Doc. 25. Also on March 8, 2011, the Defendants filed the instant motion to dismiss. Doc. 26. Plaintiff responded and the Defendants replied.

## **II. Analysis**

### *a. Failure to perfect service.*

To serve the United States, its agencies, corporations, officers, or employees<sup>1</sup>, Rule 4(i)(1) of the Federal Rules of Civil Procedure provides that a party must:

- (A) (i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—or
- (ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;
- (B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and
- (C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

Fed.R.Civ.P. 4(i)(1)(A)-(C).

Plaintiff has failed to comply with Fed.R. 4(i)(1)(A)(i) or (ii). He has presented no evidence to suggest that he sent anyone at the United States Attorney's office for the Northern District of Ohio a copy of the summons and of the complaint. As such, he has failed to perfect service upon the United States and therefore has failed to invoke this Court's jurisdiction over the Defendants.

## **III. Conclusion**

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<sup>1</sup> Warden Clifford and Dr. Shartle are United States employees.

The Defendant's motion to dismiss is GRANTED. Accordingly, the Court concludes that Plaintiff's claims against the United States should be DISMISSED without prejudice. Fed.R.Civ.P. 4(m) (stating in part that "[i]f a defendant is not served within 120 days after the complaint is filed, the Court [] must dismiss the action without prejudice against that defendant or order that service be made within a specified time.").

IT IS SO ORDERED.

DATED: April 25, 2011

/s/ John R. Adams  
Judge John R. Adams  
UNITED STATES DISTRICT COURT